

Part 1

Short Title, Construction, and General Provisions

75-1-101 Short title.

This title shall be known and may be cited as the "Utah Uniform Probate Code."

Enacted by Chapter 150, 1975 General Session

75-1-102 Purposes -- Rule of construction.

- (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this code are:
 - (a) To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
 - (b) To discover and make effective the intent of a decedent in distribution of his property;
 - (c) To promote a speedy and efficient system for administering the estate of the decedent and making distribution to his successors;
 - (d) To facilitate use and enforcement of certain trusts; and
 - (e) To make uniform the law among the various jurisdictions.

Enacted by Chapter 150, 1975 General Session

75-1-103 Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Enacted by Chapter 150, 1975 General Session

75-1-104 Severability.

If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Enacted by Chapter 150, 1975 General Session

75-1-105 Construction against implied repeal.

This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Enacted by Chapter 150, 1975 General Session

75-1-106 Effect of fraud and evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the

fraud, whether innocent or not. Any proceeding must be commenced within three years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Enacted by Chapter 150, 1975 General Session

75-1-107 Evidence of death or status.

- (1) In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:
- (a) Death occurs when an individual is determined to be dead as provided in Title 26, Chapter 34, Uniform Determination of Death Act.
 - (b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.
 - (c) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
 - (d) In the absence of prima facie evidence of death under Subsection (1)(b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
 - (e) An individual whose death is not established under Subsection (1)(a), (b), (c) or (d) who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
 - (f) In the absence of evidence disputing the time of death stated on a document described in Subsection (1)(b) or (c), a document described in Subsection (1)(b) or (c) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.
- (2) The right and duty to control the disposition of a deceased person shall be governed by Sections 58-9-601 through 58-9-604.

Amended by Chapter 49, 2003 General Session

75-1-108 Acts by holder of general power.

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

Enacted by Chapter 150, 1975 General Session

75-1-109 Duty to comply with environmental laws -- Definitions.

- (1) From the inception of the trust or estate, a fiduciary shall have the following powers, without court authorization, which it may use in its sole discretion to comply with environmental law:
 - (a) to inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;
 - (b) to take, on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;
 - (c) to refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving hazardous substance which could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate;
 - (d) to settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;
 - (e) to disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or
 - (f) to decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held in the trust or estate.
- (2) For purposes of this section "environmental law" means any federal, state, or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substances" means any substance defined as hazardous or toxic or which is otherwise regulated by any environmental law.
- (3) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary shall not be personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property or a failure by the fiduciary to inspect property shall be considered to create any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.
- (4) This section applies to all estates and trusts in existence upon and created after July 1, 1991.
- (5) No exercise by a fiduciary of any of the powers granted in this section shall constitute a transaction which is affected by a substantial conflict of interest on the part of the fiduciary.

Enacted by Chapter 133, 1991 General Session

75-1-110 Cost of living adjustment of certain dollar amounts.

- (1) In this section:

- (a) "CPI" means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U), U.S. City Average, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index adopted by the Administrative Office of the Courts.
- (b) "Reference base index" means the CPI for calendar year 2009.
- (2) The dollar amounts stated in Subsection 75-2-202(2) and Sections 75-2-102, 75-2-402, 75-2-403, and 75-2-405 apply to the estate of a decedent who died in or after 2010, but for the estate of a decedent who died after 2011, these dollar amounts shall be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100, but for the purpose of Section 75-2-405, the periodic installment amount is the lump sum amount divided by 12. If the CPI for 2009 is changed by the Bureau of Labor Statistics, the reference base index shall be revised using the rebasing factor reported by the Bureau of Labor Statistics, or other comparable data if a rebasing factor is not reported.
- (3) Before February 1, 2011, and before February 1 of each succeeding year, the Administrative Office of the Courts shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in 2011, of each dollar amount as increased or decreased under this section.

Enacted by Chapter 93, 2010 General Session